IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.821 OF 2005

Mr.Balu Anna Ghorpade and Anr. .. Appellants

Versus

Smt.Shevanta Dattu Ghorpade and Ors. Respondents

Mr.Vijay Killedar for appellants

CORAM : P.V.KAKADE, J.

DATE : 22ND AUGUST, 2005.

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by Addl.District Judge,Kolhapur dismissing the appeal and confirming the judgment and order passed by Civil Judge,Junior Division Jaysingpur dated 31.8.1998 dismissing the plaintiffs' suit.

2. I have heard the learned counsel for the

appellants. Perused the record.

3. The plaintiffs filed the suit for declaration and perpetual injunction against the defendants on the ground that there were partitions in the year 1962 and plaintiffs had handed over 1/2 land towards western side of the property of which the possession of the plaintiff was being obstructed and hence the plea for perpetual injunction was made. By way of amendment in plaint the plaintiffs have also prayed that City Survey entry pertaining to C.T.S. No.1321 to be declared as illegal. The defendants contested the suit, inter alia, submitting that after the partitions in the year 1962, CTS No.607 admeasuring 155.7 sq. meter was given to the plaintiff, which is by the side of main road. While defendants were given CTS No.609 admeasuring 72 sq.meters and house thereon was old, and in dilapidated condition. Since the defendants were given a property admeasuring less in area, therefore, the whole present CTS No.1321 was given to the share of Dattu and defendant no.5 and 6, since ten they are in possession and plaintiff has no concerned with that property.

. The learned trial judge adjudicated the dispute

on merits and came to the conclusion that the plaintiff failed to prove his exclusive possession and enjoyment in the suit property in the light of partition in 1962-63. It was also held that the plaintiff had failed to prove obstruction to his possession and as such he was non suited. The appeal was carried to the District Court, Kolhapur. The learned Addl.District Judge after hearing both the parties and on the basis of available evidence concurred with the findings recorded by the lower court and dismissed the appeal. Hence the present appeal.

4. Initially it must be noted that there is absolutely no substantial question of law involved in this appeal. The concurrent findings recorded by both the courts below are the findings purely of issues of fact, which are seen to be properly appreciated by the lower appellate court, which is last court of fact, and therefore, there is no basis as to why those findings of facts should be interfered with, especially when those are found to be legal and proper. As noted earlier, as there is no substantial question of law involved in this appeal. I find no merit in the appeal and appeal stands dismissed with no order as to costs.